

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

Deshaune D. Darling,)
_____,)

Petitioner,)

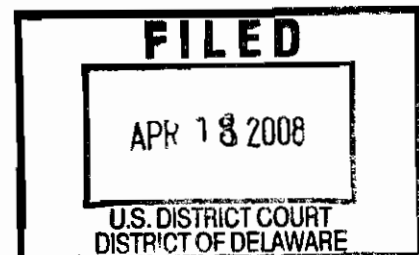
v.)

Thomas Carroll)
Correctional Medical Service)
Deputy Warden David Pierce)
_____,)
_____)

Respondent.)

Civ. Act. No. 007-683 GMS

Jury Trial Demanded



Response Motion to Defendants
Motion to Dismiss

Defendants Correctional Medical Services, Inc. ("CMS")
filed a Motion to Dismiss Plaintiffs claim for
failure to file an affidavit of merit as
required by 18 Del.C. 6853 (a)(1). Under Delaware
law, healthcare negligence lawsuits cannot be
filed unless the complaint is accompanied by
an affidavit of merit signed by an expert
witness stating that there are reasonable
grounds to believe there has been healthcare
medical negligence, 18 Del.C. 6853 (a)(2). Defendant
argues that this court should dismiss

Plaintiffs' complaint because it was not accompanied by an affidavit of merit. However, this is a federal Court and Plaintiffs' claims under 42 U.S.C. 1983 are based on violations of the United States Constitution. Consequently, 18 Del.C. 6853 (a)(1) does not apply to Plaintiffs' complaint. Plaintiff prays that the Court reject Defendant's Motion to Dismiss for failure to submit an affidavit of merit. (Citing *McCray v. First State Medical System* 379 F. Supp. 2d 71 (D. Del. 2005))

Dated: 4-16-08

Deshaune D. Darling Jr.

Delaware Correctional Center
1181 Paddock Road
Smyrna, DE 19977

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_____))
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ORDER

This _____ day of _____, 200__

IT IS HEREBY ORDERED that _____

United States District Judge/Magistrate

Certificate of Service

I, Deshaune D. Darling, hereby certify that I have served a true

And correct cop(ies) of the attached: Motion to Response to Defendants
Motion to Dismiss upon the following

parties/person (s):

TO: James E. Dineen, Esq.
Balick & Balick
711 King St.
Wilmington, DE 19801

TO: _____

TO: _____

TO: _____

BY PLACING SAME IN A SEALED ENVELOPE, and depositing same in the United States Mail at the Delaware Correctional Center, Smyrna, DE 19977.

On this 16 day of April, 2008

Deshaune D. Darling Jr.

IM Deshaune D. Darling
SBI# 229896 UNIT V
DELAWARE CORRECTIONAL CENTER
1181 PADDOCK ROAD
SMYRNA, DELAWARE 19977

Legal Mail
WILMINGTON DE 197
APR 18 2008 PM 2:17



Office of the Clerk
United States District Court
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Wilmington, DE 19801-3570